

SENATE CHAMBER, }  
AUSTIN, Oct. 1, 1866. }

Senate met pursuant to adjournment.

Prayer by the chaplain.

Roll called—quorum present.

Journal of Saturday read and adopted.

Senator Neyland made the following report :

COMMITTEE ROOM, }  
Oct. 1, 1866. }

*Hon. G. W. Jones, President of the Senate :*

The Committee on Engrossed Bills, have examined, and find correctly engrossed the following bills, viz :

A bill to be entitled "An Act to permit former owners of land sold for taxes prior to 28th day of January, 1861, and purchased by the State, to redeem the same."

A bill to be entitled "An Act concerning disorganized counties."

A bill to be entitled "An Act supplemental to and amendatory of an act to incorporate Colorado College."

A bill to be entitled "An Act to incorporate the Lake, Lock, and Dam Company,"

A bill to be entitled "An Act supplementary to an act entitled an act to incorporate the San Antonio Ice Company."

A bill to be entitled "An Act supplementary to an act entitled an act apportioning the State into Congressional districts, and providing for the election of members to the Congress of the United States."

A bill to be entitled "An Act to authorize guardians and administrators to compound bad and doubtful debts in certain cases."

Joint resolution concerning the removal of the remains of Gen. Albert Sidney Johnston, from the State of Louisiana, and their interment in the State Cemetery at Austin.

Respectfully submitted,

W. M. NEYLAND,

Chairman Committee on Engrossed Bills.

Senator Foscoe made the following report :

*To the President of the Senate :*

The Joint Committee of Conference on the disagreeing votes of the two Houses upon a bill to be entitled "An Act to incorporate the Houston Direct Navigation Company," have agreed that the 4th and 17th sections of the bill be stricken out ; that all pending amendments to said bill be withdrawn ; that section

16 be amended, by inserting in the third line before objects, "chartered."

In this form the Joint Committee unanimously recommend the passage of the bill.

F. F. FOSDICK, Chairman on part of Senate.

M. S. MUNSON, Chairman on part of House.

Senator Parker made the following report :

*Hon. G. W. Jones, President of the Senate :*

The Committee on Enrolled Bills have examined "An Act authorizing the Judge of the 13th Judicial District to hold a special term of the District Court in Robertson and Falls counties, and find the same correctly enrolled, properly signed, and they have presented the same to the Governor for his approval.

F. J. PARKER, Chairman.

Senator Shelley submitted the following report :

*To the President of the Senate :*

The minority of the Committee on the Judiciary, to which was referred a bill to be entitled "An Act to divide the State into Judicial Districts," submit the following minority report respectfully.

Recognizing the duty of the Legislature at its present session, under the injunction of the ordinance of the Convention, "to divide the State into *convenient* Judicial Districts, so as to assign to each Judge, as near as practicable, *thirty-two* weeks of judicial labor per annum;" and the further fact that it was within the contemplation of the Convention, that such division could be made, so as to reduce the number of districts; the minority respectfully submit that neither the letter or the spirit of the injunction is observed and complied with by the bill, as recommended by the majority of the committee. By reference to the ordinance it will be seen that the manner in which this work is to be performed by the Legislature, is no less distinctly and imperatively prescribed than it is that the division shall be made. To divide the State into Judicial Districts is enjoined by the ordinance. How, in what manner? Into *convenient* judicial Districts; so that, as declared in the caption, the labor shall be equalized, and the "terms" made uniform, and to assign, as near as practicable, "to each Judge thirty-two weeks of Judicial labor per annum." The object of the ordinance, is "to equalize the labor, and make uniform the terms of Judicial Districts." This object is to be accomplished as near as practicable, having regard to convenience as the superior and controlling consideration. Not that convenience with which the Legislature may the more readily and easily get rid of the work, but that convenience

which consults and subverts the interests for which courts are established and maintained. And in this connection, the minority would respectfully remark that this Legislature has no more authority to create an inconvenient Judicial District, than it has to decline to attempt the performance of the duty enjoined by the ordinance. Nor can it be said that the State has been properly divided into Judicial Districts in disregard of the object to equalize the labor of the Judges.

The minor proposition contained in the ordinance, that which seems to have been regarded as a sequence only to the major purpose as expressed, has been transposed by the majority of the committee; and from being subordinate and consequential, has been treated as, if not the sole, the superior and controlling purpose of the Convention. Losing sight of everything else, apparently, regard is had solely to the reduction of the number of Judicial Districts; under the fallacious idea, as the minority, with all proper deference to the opinion of the majority, believe, of economizing the expenditures to the public of the administration of the Judicial department of the government.

Having regard, then, to the plainly expressed purposes of the ordinance enjoining the division of the State, the bill reported by the majority will not bear scrutiny. It is obviously upon the slightest examination, obnoxious to the objections that it neither organizes convenient Districts, equalizes the labor, or makes uniform the terms; and if it could be said that the power to pass an act dividing the State into Judicial Districts, is dependent upon this ordinance for its existence, and it is as stated, subject to these objections, it would not be said that the Legislature has the power to pass this bill. And it may not be unworthy of inquiry, whether the Legislature has the power, except in accordance with the terms of the ordinance, to reduce the number of the districts, and vacate and destroy a franchise which has already attached. The minority do not assert the proposition that the Legislature has not such power; yet it will not be controverted, that if any doubt exists, or question can be made as to the power, it furnishes a reason the force of which should not be ignored, why the ordinance in all its terms should be observed and pursued.

It is believed that it will not be said, that the districts, as made by the House bill recommended by the majority, are organized with due regard to the convenience of the people, or to the interests which are to be conserved by the District Courts. It cannot be said, adopting the number of districts provided in the bill, as being sufficient, that they are made with reference

to geographical compactness, homogeneousness of population, identity or similarity of interests and pursuits, business intercourse, or to the facilities and convenience of intercommunication. The official functions of Judges of the District Courts are not all performed in or confined to the Court-houses and in term time. Litigants have other uses, oftentimes, for Judges, than to preside over the adjudication of their rights in the Court-house. Exigencies frequently exist, requiring remedial process, which issue alone upon the fiat of the Judge, and in this view compactness of organization, topography of territory, facilities for intercommunication, trade connections, lines of travel, all deserve to be considered.

It is assumed that the organization of the County Courts, with jurisdiction as authorized by the Constitution, will reduce the business in the District Courts, so as greatly to diminish the time heretofore occupied in the dispatch of their business, and that therefore the districts may be enlarged and the number reduced. This may be true. The experiment has yet to be tried. It may prove, however, that the appellate jurisdiction over the proceedings of the County Courts, and the trial of all causes *de novo*, brought by appeal to the District Court, as well as the increased demand upon the functions growing out of the circumstances of the country, will disappoint these apprehensions. Because of the almost entire suspension of the Courts for four or five years past, there have been large accumulations of causes upon all of the dockets. The delay of suitors heretofore, will increase their impatience to have their causes disposed of, so soon as the Courts are again regularly at work. This impatience, if the terms are inadequate in length, will occasion hasty and immatured action in the Courts which will not comport with the obtainment of satisfactory results, and the consequence will be large accumulations of business upon the dockets of the Supreme Court. The Judiciary instead of affording the means for the redress of grievances and the enforcement of rights, will become the instrument for the denial of justice, and the infliction of wrongs.

The Minority, with confidence, asserts that the bill of the majority does not equalize the labor of the Judges.

The Third District is composed of six counties with an area of 5,840 square miles, while the Eighteenth District with its attachments for Judicial purposes, comprises sixteen counties, with an area of over fifty thousand miles.

The Sixth District comprises seven counties with an area of 5,645 square miles; while the Second District with its attach-

ments for Judicial purposes, comprises thirteen counties with an area of nearly 12,000 square miles. Equal disparities characterizes the organizations of other Districts. And it is worthy to be noticed, in this connection, that there is a manifest oversight of the susceptibilities of the different portions of the territory of the State to an increase of population, as well as to the local inducements to the development of the natural resources of the country. The objectionable features of the bill are so numerous that it is difficult to find in it anything to commend, or determine which of them most demand to be noticed. The Third District is divided by the intervention of a county attached to another District, separating two of its counties on the one side, and four on the other. And notwithstanding the smallness of the District, relatively, a criminal court is being provided for two of its counties which will relieve the District Courts of the largest portion of the business of those counties. The convenience and interest of a large district of country on the Rio Grande are wholly disregarded. Litigants and suitors, criminal as well as civil, are required to travel over seven hundred miles to a county far in the interior of the State from that border, to have their rights determined, while no provision is proposed for their relief.

Entertaining these views of the bill reported by the majority, the minority cannot join in its recommendation; nor can the minority, under the pressure of the demand, factitious and real, that the number of Districts shall be reduced, propose a bill altogether satisfactory to themselves, with any prospect of its success.

The minority, therefore, respectfully submit the accompanying substitute, prepared with deference to the ascertained satisfaction with its arrangement of the greater portion of the State, and, in other respects, having such reference to the interests which we think should be regarded in the organization of the Districts, as can be had under the circumstances. We propose the creation of a Criminal District for the counties of El Paso and Presidio, and the organization of a Criminal Court for said counties, and will present a bill at the proper time for that purpose. Believing that the bill herewith presented is preferable to the House bill, consulting in a greater degree the convenience and interests of the people, the minority respectfully recommend its adoption. All of which is respectfully submitted.

N. G. SHELLEY,  
J. W. STELL,  
B. T. SELMAN.

Senator Saufley introduced a bill to relinquish the State Tax to Marion county for the year 1867.

Read first time, and referred to Finance Committee.

Senator Knox introduced a bill to authorize the Judges of Courts of Record to employ Phonographers.

Read first time, and referred to Judiciary Committee.

Senator Blount introduced the following resolution :

*Resolved*, That the Judiciary Committee be, and they are, hereby instructed to inquire into the propriety of amending the laws now in force, in relation to the administration and settlement of estates of deceased persons, so as to secure a more speedy settlement of estates, and more effectually protect the interest of minors ; and report at as early a day as practicable, by bill or otherwise.

Adopted.

A message was received from the House, announcing the passage of the following bills:

A bill granting a charter to Robert A. Rike and E. Dobson to build a toll bridge across Pilot Grove Creek, on the direct road leading from McKinney to Greenville, by Farmersville, in Collin county.

Joint resolution concerning the removal of the remains of Gen. Albert Sydney Johnston from the State of Louisiana, and their interment in the State Cemetery at Austin.

The Chair announced Senator Cook on the part of the Senate on the joint committee, to proceed to the State of Louisiana, to escort the remains of Gen. Albert Sydney Johnson from that State to the city of Austin, to be interred in the State Cemetery of Texas.

The message also announcing the passage of a bill to incorporate the town of Pilot Point, in Denton county.

And that the House had adopted the report of the Committee of Conference on the disagreement of the two Houses on a bill to incorporate the Houston Direct Navigation Company, and had made sundry amendments.

Senator Saufley offered the following resolution:

*Resolved*, That the Secretary of the Senate be instructed to procure the necessary fuel for the use of the Senate during the present session.

Resolution adopted.

Upon motion of Senator Selman, a bill for the relief of Wm. M. Cook, with the report of the Committee on Public Lands, recommending the reference of the bill to the Judiciary Com-

mittee, was taken up, adopted, and referred to Judiciary Committee.

### ORDERS OF THE DAY.

A bill to incorporate the Lake, Lock and Daar Company, on its third reading, taken up, read third time, and passed by the following two-third vote:

YEAS—Senators Braswell, Boyd, Burney, Cook, Coppedge, Dalrymple, Guinn, Jowers, McDade, Nelson, Neyland, Parker, Randolph, Record, Reed, Sanley, Selman, Shannon, Shelley, Stell, Truitt and Yarbrow—22.

NAYS—Senators Bumpass, Cooley, Foscue and Knox—4.

A bill to amend "An act to adopt and establish a Penal Code," with the report of the Committee on the Penitentiary, recommending the adoption of a substitute, was taken up, and substitute adopted.

Senator Shelley, by permission, introduced a bill to authorize H. W. Davis to erect a dam across the San Marcos river, in Hays county.

Read first time, and referred to Committee on Manufactures and Commerce.

The hour having arrived for the consideration of the special order, viz: a House bill to provide for districting the State of Texas into Judicial Districts, on its third reading, was taken up.

Senator Dalrymple moved that 100 copies of the majority report and bill recommended by it, and 100 copies of the minority report and substitute recommended by it, be printed, and that the entire subject be made the special order for Thursday next, at 11 o'clock.

Motion being divided, the question was put upon the postponement, and the yeas and nays being called for, the Senate refused to postpone, by the following vote, viz:

YEAS—Senators Cooley, Dalrymple, Selman, Shannon, Shelley, Stell and Yarbrow—7.

NAYS—Senators Braswell, Blount, Boyd, Brown, Bumpass, Burney, Coppedge, Foscue, Guinn, Jowers, McDade, Nelson, Neyland, Record, Reed, Sanley and Truitt—17.

Senator Dalrymple withdrew the motion to print.

Senator Shelley moved to lay the majority report and the bill upon the table, and also moved a call of the Senate. The call being sustained, the roll was called. The Senate being full, it resumed the consideration of the question, which was upon Senator Shelley's motion to lay the bill and report on the table;

and the yeas and nays being called, the Senate refused to lay the bill and report on the table, by the following vote, viz:

YEAS—Senators Cooley, Dalrymple, Randolph, Selman, Shannon, Shelley, Stell and Yarbro—8.

NAYS—Senators Braswell, Blount, Boyd, Brown, Bumpass, Burney, Cook, Coppedge, Foscue, Guinn, Jowers, Knox, Littleton, McDade, Nelson, Neyland, Parker, Record, Reed, Saufley and Truitt—21.

The question now being upon the passage of the bill to a third reading,

Senator Shelley moved to amend as follows, viz: by striking out in 2d Section, "Gillespie, Mason and Llano," and inserting "Comal and Kendall," and by striking out in 12th Section, "Comal and Kendall," and inserting "Gillespie, Mason, Llano and Menard," and by inserting in 11th Section, "McCulloch," after "San Saba;" also by striking out 16th Section.

Yeas and nays being called upon the adoption of the amendments, they were rejected by the following vote, viz:

YEAS—Senators Cooley, Dalrymple, Parker, Randolph, Selman, Shannon, Shelley and Stell—8.

NAYS—Senators Braswell, Blount, Boyd, Brown, Bumpass, Burney, Cook, Coppedge, Foscue, Guinn, Jowers, Knox, Littleton, McDade, Nelson, Neyland, Record, Reed, Saufley, Truitt and Yarbro—21.

The question recurring upon the passage of the bill to a third reading, and the yeas and nays being called for, Senator Shelley moved a call of the Senate.

Call sustained.

Senator Littleton moved to adjourn to 9 o'clock to-morrow morning.

Lost.

Roll called. Senate being full, call was suspended.

Senator Cooley moved to amend Section 17 by striking out the word "Bandera," in fourth line, and substituting "Uvalde;" which amendment was cut off by the main question, which was ordered on motion of Senator Neyland.

Senator Bumpass moved a call of the Senate.

Call sustained.

Pending the call, Senator Stell introduced a bill to regulate seizures, in certain cases.

Read first time, and referred to Judiciary Committee.

Senator Parker introduced a bill relinquishing the State tax of Cameron county to said county, for the purpose of erecting a jail.



Read first time, and referred to Committee on Finance.

Senate being full, the call was suspended, and the yeas and nays being called upon ordering the main question, it was ordered by the following vote:

YEAS—Senators Braswell, Blount, Boyd, Brown, Bumpass, Burney, Cook, Coppedge, Foscue, Guinn, Jowers, Knox, Littleton, McDade, Nelson, Neyland, Record, Reed, Sautley and Truitt—20.

NAYS—Senators Cooley, Dalrymple, Parker, Shannon, Selman, Shelley, Stoll and Yarbrough—8.

Bill passed to a third reading.

Upon motion of Senator Foscue the Senate adjourned until to-morrow morning, at 9 o'clock.

SENATE CHAMBER, }  
October 2, 1866. }

Senate met pursuant to adjournment.

Prayer by the Chaplain.

Roll called—quorum present.

Journal of yesterday read and adopted.

Senator Selman presented a memorial from the Railroad Convention assembled at Tyler on the 11th ult.; and

Upon motion of Senator Burney, it was referred, without reading, to Committee on Internal Improvements.

Also presented a memorial of citizens of Smith county; and introduced a bill to incorporate the Tyler Manufacturing Company, which, upon motion of Senator Guinn, was referred to Committee on Commerce and Manufactures.

Senator Parker made the following report:

*Hon. G. W. Jones, President of the Senate:*

The Committee on Enrolled Bills have examined the following, viz:

A bill to be entitled "An act granting a charter to build a toll bridge across East Fork of the Trinity river."

A bill to be entitled "An act to grant a charter to A. Reecer to build a toll bridge across Sister Grove Creek, at or near where the McKinney and Farmersville road crosses said creek in the county of Collin," and find the same correctly enrolled and properly signed, and have presented them to the Governor for his approval.

F. J. PARKER, Chairman.